

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Alonzo Jerome Graham,

Petitioner,

v.

Civil No. 10-2404 (JNE/JJK)
ORDER

Jessica Symmes, Warden,

Respondent.

In a Report and Recommendation dated May 19, 2011, the Honorable Jeffrey J. Keyes, United States Magistrate Judge, recommended that Petitioner's petition under 28 U.S.C. § 2254 (2006) be denied and that this action be dismissed with prejudice. Petitioner objected to the Report and Recommendation. The Court has conducted a de novo review of the record. *See* D. Minn. LR 72.2(b). Based on that review, the Court adopts the Report and Recommendation.

An appeal cannot be taken from a final order denying a petition under § 2254 without a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A) (2006); Fed. R. App. P. 22(b)(1). A court cannot grant a certificate of appealability unless the applicant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Where a district court rejects claims on procedural grounds, a certificate of appealability "should issue when the prisoner shows . . . that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural

ruling.” *Id.* Because reasonable jurists would not find the rejection of Petitioner’s claims debatable or wrong, the Court declines to issue a certificate of appealability.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Petitioner’s Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody [Docket No. 1] is DENIED.
2. This action is DISMISSED WITH PREJUDICE.
3. A certificate of appealability is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 12, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge